

REMARKS/ARGUMENTS

The Examiner has delineated the following inventions as being patentably distinct:

Group I: Claim(s) 1-23, drawn to a method for detecting, separating and identifying an expressed trace protein and/or peptide in a test sample.

Group II: Claim(s) 24-25, drawn to a device.

Applicants provisionally elect with traverse the invention of Group I (Claims 1-23) drawn to a method for detecting, separating and identifying an expressed trace protein and/or peptide in a test sample.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions that the claims of the restricted groups are patentably distinct.

The claims of Groups I and II are related as method and means of performing said method, and are considered as being interdependent and should be examined together on the merits, especially wherein the sole disclosed utility is that disclosed in the specification. The claims of Group II further define the invention of Group I. There is a commonality that exists between Groups I and II. It is a technical relationship that involves the same features, and it is this technical feature that defines the contribution which each of the Groups taken as a whole makes over the prior art.

Different classification of subject matter to be divided is not conclusive of independent status and divisibility. Method and means by which this method is performed are considered related inventions under 37 C.F.R. § 1.475(b), and unity of invention between the Groups exists.

Applicants respectfully traverse on the additional grounds that the Office has not shown that a burden exists in searching the entire application.

Further the M.P.E.P. §803 states as follows:

“If a search and examination of an entire application can be made without a serious burden, the Examiners must examine it on its merits even though it includes claims to distinct and independent inventions.”

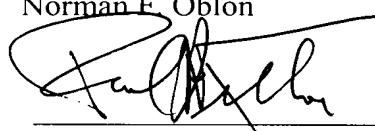
Applicants submit that a search of all claims would not constitute a serious burden on the Office. In fact the International Search Authority has searched all of the claims together. As the Office has not shown any evidence that a restriction should now be required when the International Preliminary Examination Report did not, the restriction is believed to be improper. 37 C.F.R. § 1.475(b) provides in relevant part, that “a national stage application containing claims to different categories of inventions will be considered to have unity of invention if the claims are drawn to...(3) a product, process especially adapted for the manufacture of said product, and a use of said product.” In the instant application Claims 1-23 are directed to a method, while Claims 24-25 are directed to a means for proteomics studies.

For the reasons set forth above, Applicants request that the Restriction Requirement be withdrawn.

Applicants further request that if Group I is found allowable, withdrawn Group II which includes the limitations of the allowable claims be rejoined.

Respectfully submitted,

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